HON'BLE SRI JUSTICE V.V.S.RAO

AND

HON'BLE SRI JUSTICE SAMUDRALA GOVINDA RAJULU

CRIMINAL APPEAL No.1624 of 2006

Date:16.02.2010

Between:

1. Ravula Chandraiah, and another

.....Appellants

And:

The State of Andhra Pradesh, rep. By
Public Prosecutor, High Court of A.P.

.....Respondent

HON'BLE SRI JUSTICE V.V.S.RAO
AND
HON'BLE SRI JUSTICE SAMUDRALA GOVINDA RAJULU

CRIMINAL APPEAL No.1624 of 2006

JUDGMENT: (per Hon'ble Sri Justice Samudrala Govinda Rajulu)

This appeal is filed by the accused Nos.1 and 2 (A-1 and A-2) against Judgment dated 12.10.2006 passed by the III Additional Sessions Judge (Fast Track Court), Nalgonda in Sessions Case No.76/2006 by which the lower Court convicted A-1 and A-2 under Section 302/34 I.P.C and sentenced them to suffer imprisonment for life and pay fine of Rs.1,000/-.

2) A-1 is wife of A-2. A-3 who did not face trial in the lower Court, is son of A-1 and A-2. It is stated that A-3 faced trial in Juvenile Court and he was acquitted. The deceased Ravula Venkatayya is younger

brother of A-1. It is alleged that since A-1 was not doing any work, his father P.W-4 sent him away from family house and that since then A-1 to A-3 were living separately and that there are disputes among family members about joint family properties. It is alleged that on 26.04.2005 at about 6.00 A.M when the deceased was going to fields for tapping toddy, A-1 to A-3 attacked the deceased near P.W-2's house and caused his death by stabbing with toddy tapping knives and axe.

3) The lower Court framed charge against A-1 and A-2 for offence punishable under Section 302/34 I.P.C. A-1 and A-2 pleaded not guilty of the charge. They did not take up any other specific plea of defence. During trial in the lower Court, the prosecution examined P.Ws 1 to 18 and marked Exs.P-1 to P-15 and M.Os 1 to 5. The accused also examined D.W-1 and marked Ex.D-1 on their behalf. Considering material on record, the lower Court came to conclusion that A-1 and A-2 are guilty of offence punishable under Section 302/34 I.P.C; and accordingly passed the above said convictions and sentences against A-1 and A-2.

4) In this appeal, it has to be seen whether the prosecution has proved guilt of A-1 and A-2 for offence punishable under Section 302/34 I.P.C.

5) P.W-1 who is wife of the deceased gave first information report to the police as per Ex.P-1 in Chandampet Police Station on the same day. P.W-16, who is the Assistant Sub Inspector of Police received Ex.P-1 from P.W-1 and registered the same as case in Crime No.29/2005 under Section 302/34 I.P.C and issued Ex.P-11 F.I.R. P.W-18 took up investigation of the case, examined witnesses, conducted inquest on dead body of the deceased in presence of P.Ws-6 and 7 as Panchayatdars under cover of Ex.P-2 inquest report. P.W-15 is the Civil Assistant Surgeon, Devarakonda, who on requisition of P.W-18 conducted Post Mortem examination on deadbody of the deceased and gave Ex.P-10 Post Mortem certificate. As per Post Mortem certificate,

the deceased was having the following four injuries.

1. Incised wound over the left anterior chest 4x4 cm
2. Incised wound on the right hipho condrial 4x4cmx4cm
3. Incised wound on the left shoulder 5x2 cm
4. Incised wound on the fore head 4x4cm, contain small iron pieces which recovered from the wound

P.W-15 opined that cause of death was due to hemorrhagic shock due to multiple injuries. It is alleged that P.W-17, the Sub Inspector of Police arrested A-2 and A-3 on 01.05.2005 and seized M.Os 1 and 2 axe and toddy tapping knife in pursuance of the alleged statements of A-2 and A-3 under cover of Ex.P-13 panchanama. It is further alleged that P.W-18 arrested A-1 on 02.05.2005 and seized M.O-5 toddy tapping knife in pursuance of his alleged statement under cover of Ex.P-15 panchanama. The alleged statements of A-1 to A-3 given to the police officers after their respective arrests are inadmissible in evidence under Section 26 of The Evidence Act except to the extent saved by Section 27 of the Evidence Act. It is contended that seizure of each weapon at the instance of each of the accused is artificial.

6) According to the prosecution case, P.Ws 2 and 3 are eye witnesses to the occurrence. Even though in Ex.P-1 First Information Report, P.W-1 also claimed to be an eye witness to the occurrence, she gave go-bye to the said version during her examination as P.W-1. P.W-4 is father of A-1 and the deceased. He also initially claimed to be a witness when he was examined during trial in the lower Court. But, subsequently he had to admit that he went to the scene only after the occurrence. So, P.Ws 1 and 4 are not eye witnesses to the occurrence.

7) Scene of the offence is in front of P.W-2's house. It is evidence of P.W-2 that at about 6.00 A.M while the deceased Venkatayya was proceeding towards toddy trees, A-1 and A-2 stabbed him on the way in front of her house. She says that A-1 beat Venkatayya with stock on his shoulder and that thereafter A-2 stabbed

Venkatayya with tapping knife in stomach, on left hand and caused injuries due to which he died. When evidence of P.W-2 is cross checked with evidence of P.W-15 and Ex.P-10 P.M certificate, it is evident that there is no stick injury on shoulder. The deceased was having incised wound on left shoulder. Incised wound is caused only with a sharp edged weapon and not blunt object like stick. In any event, stick beating on shoulder cannot be fatal. Secondly there is no stab injury on the deceased in the stomach portion and also on left hand. The medical evidence is not corroborating oral evidence of P.W-2 with regard to overt acts attributed to A-1 and A-2 by P.W-2. Further, P.W-2 did not speak about presence of A-3 and participation of A-3 in the offence. Perhaps for that reason A-3 was acquitted by the Juvenile Court.

8) It is evidence of P.W-3 that he saw A-1 to A-3 quarrelling with Ravula Venkatayya (deceased) in front of his house. He says that he saw A-1 beating Venkatayya with tapping knife on his chest and that A-2 also beat Venkatayya with tapping knife on his hand and shoulder. Except an incised injury on left shoulder, there are no corresponding injuries found on dead body as per version of P.W-3. P.W-3 also did not specify whether A-2 beat the deceased on left shoulder or right shoulder. P.W-3 further says that A-3 beat the deceased with axe on his shoulder. So, it is doubtful even according to P.W-3 as to whether injury No.3 of Ex.P-10 P.M certificate which is incised would on left shoulder was caused by A-2 or A-3. Thus, oral evidence of eye witnesses namely P.Ws-2 and 3 is highly discrepant with each other and it is also discrepant with medical evidence; and their evidence does not inspire confidence of this Court in their truthfulness. It is contended by the appellants' counsel that presence of P.W-3 at the time of offence was not disclosed in Ex.P-1 First Information Report. In cross-examination, P.W-3 says that scene of the offence is located at a distance of 100 yards from his house and that he tried to interfere in the incident, but by that time already the accused persons stabbed the deceased. From a distance of 100 yards P.W-3 might not have specifically witnessed the

alleged overt acts spoken to by him during evidence in the lower Court. This Court finds that evidence of P.Ws 2 and 3 is not trustworthy. The lower Court should not have accepted their evidence and should not have recorded conviction of the accused.

9) Therefore, for all the above reasons, we are of the opinion that the prosecution has miserably failed to prove guilt of A-1 and A-2 for offence punishable under Section 302/34 I.P.C.

10) In the result, the appeal is allowed setting aside the convictions and sentences passed by the lower Court against the appellants 1 and 2/A-1 and A-2. The appellants shall be set at liberty at once.

V.V.S.RAO,J

SAMUDRALA GOVINDA RAJULU,J

Date:16.02.2010
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HON'BLE SRI JUSTICE V.V.S.RAO

AND

HON'BLE SRI JUSTICE SAMUDRALA GOVINDARAJULU

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(per Hon'ble Sri Justice Samudrala Govindarajulu)

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